



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8**  
**999 18<sup>TH</sup> STREET - SUITE 300**  
**DENVER, CO 80202-2466**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

**October 4, 2004**

Ref: 8ENF

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Richard O. Curley, Jr.  
Counsel for Atlantic Richfield Company  
Holland & Hart, L.L.P.  
P.O. Box 8749  
Denver, CO 80201-8749

Re: Tooele Valley Railroad Grade Site; Unilateral Administrative Order for Soil Removal

Dear Mr. Curley,

As we recently discussed, the US Environmental Protection Agency, Region 8 (EPA), is issuing to the Atlantic Richfield Company a Unilateral Administrative Order for Removal Response Activities (Order)(enclosed), effective five (5) days from the date of signing by EPA. The Order requires Atlantic Richfield to conduct contaminated soil removal and submit a final report on identified areas at the Tooele Valley Railroad Grade Site, in and near Tooele, Utah.

EPA recognizes Atlantic Richfield's efforts and cooperation in completing the necessary sampling at this Site under the previous order. EPA has completed review of the sampling data and the final sampling report you submitted and has issued an Action Memorandum for the soil removal it has determined to be necessary. Properties to be remediated have been identified based on appropriate health-based soil lead and arsenic action levels determined by EPA for the Site.

EPA discussed with you the option of performing this work under an administrative order on consent. You indicated that in light of the need to begin this work expeditiously, your client, Atlantic Richfield, would not object to the issuance of a unilateral administrative order for the



soil removal work in lieu of negotiating an order on consent. If you have any questions regarding this matter, please call me at (303) 312-6912.

Sincerely,

**SIGNED**  
James Stearns  
Staff Attorney

Enclosure

cc: Shun-Ping Chau, 8EPR-ER  
Sheila D'Cruz, BP America Inc.  
Pamela Kaye, ARCO Environmental Remediation, LLC  
Robert O'Brien, Utah DEQ  
Dawn Tesorero, 8ENF-T

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII**

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<b>IN THE MATTER OF:</b>	)	<b>UNILATERAL ADMINISTRATIVE</b>
	)	<b>ORDER FOR REMOVAL RESPONSE</b>
<b>Tooele Valley Railroad Grade Site</b>	)	<b>ACTIVITIES</b>
<b>Tooele County, Utah</b>	)	
<b>SSID # 08-DU</b>	)	<b>U.S. EPA Region 8</b>
	)	<b>Docket No. CERCLA-08-2005-0001</b>
	)	
<b>Atlantic Richfield Company</b>	)	<b>Proceeding Under Section 106(a) of the</b>
	)	<b>Comprehensive Environmental</b>
<b>Respondent.</b>	)	<b>Response, Compensation, and Liability</b>
	)	<b>Act, as amended, 42 U.S.C. § 9606(a)</b>
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              2 - Action Memorandum  
              3 - Sample Results

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (“CERCLA”), and delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the undersigned EPA officials.
2. This Order pertains to property located at the Tooele Valley Railroad Grade Site (“Site”), generally located along the former railroad right-of-way running approximately four (4) miles from the City of Tooele, Utah, east to the Site’s connection with the central portion of the International Smelting & Refining National Priority List Superfund Site, in Tooele County, Utah, and depicted generally on the maps attached as Appendix 1 (Figures 1 and 2) to this Order. This Order requires the Respondent to conduct the Removal Actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site. The cleanup actions will be implemented in coordination with other remedial activities at the IS&R Site.
3. EPA has notified the State of Utah of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and is binding upon Respondent and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.
5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Action Memorandum” shall mean the Action Memorandum issued by EPA for the Tooele Valley Railroad Grade Site on October 1, 2004, attached to this Order as Appendix 2.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Order as provided in Section XVIII.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the United States Code, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time of accrual.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto, which are hereby incorporated by reference. In the event of conflict between this Order and any appendix, this Order shall control.

“Paragraph” shall mean a portion of this Order identified by an arabic numeral.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., (also known as the Resource Conservation and Recovery Act).

“Removal Action” shall mean those activities to be undertaken by Respondent in accordance with this Order and the Work Plan approved under this Order.

“Section” shall mean a portion of this Order identified by a roman numeral.

“Site” shall mean the Tooele Valley Railroad Grade Site, a facility generally located along a former railroad right-of-way running approximately four (4) miles from the City of Tooele, Utah, east to the central portion of the International Smelting & Refining National Priority List Superfund Site, in Tooele County, Utah, of which the Tooele Valley Railroad Grade Site is a part. The Site is depicted generally on the maps attached as Appendix 1 to this Order. The Site also encompasses any areas that hazardous substances or pollutants or contaminants from Site activities are found to have been placed on or to have migrated.

“Waste Material” shall mean (1) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

“Work” shall mean all activities Respondent is required to perform under this Order.

“Work Plan” shall mean the plan for soil removal to be submitted by Respondent under this

Order, and any modifications made in accordance with this Order, as may be approved by EPA pursuant to this Order.

#### **IV. FINDINGS OF FACT**

##### **Site Description and History**

7. a. The Tooele Valley Railroad Grade Site is generally located along a former railroad right-of-way extending from within the City of Tooele, Utah (“Tooele”), east to the central portion of the International Smelting & Refining National Priority List Superfund Site, in Tooele County, Utah (“IS&R Superfund Site”). The Site starts at First (1<sup>st</sup>) Street in Tooele and extends east, crossing 2<sup>nd</sup>, Broadway Avenue, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Streets, which are residential, and then continues east along the right-of-way through a parcel of land owned by the Church of Jesus Christ of Latter-Day Saints, through land adjacent to the Oquirrh Hills School playground, past a public golf course and then east and northeast through other more rural areas. The Site is part of the IS&R Superfund Site.

b. In 1910, International Smelting & Refining Company (IS&R) began operating a copper smelter (also referred to as the “Tooele Smelter”) on the western slope of the Oquirrh Mountains approximately three miles east of Tooele, Utah. In 1914, Anaconda Copper Mining Company, later known as The Anaconda Company (“Anaconda”), acquired all of the stock of IS&R, which was then dissolved. A new corporation, International Smelting Company (“ISC”), was formed and Anaconda, the major shareholder of ISC, transferred the assets of the Tooele Smelter facility to ISC. In 1934, ISC changed its name to International Smelting & Refining Company, the same name as the company that first operated the facility. The newly formed IS&R owned and operated the Tooele Smelter until 1973 when IS&R was merged into Anaconda. The Respondent, Atlantic Richfield Company (“AR”), acquired Anaconda in 1977 and merged Anaconda into AR in 1981. AR is the current owner of the former smelting and ore processing portions of the land comprising the IS&R Superfund Site.

c. For more than sixty years, from 1910 until 1972, the Tooele Smelter was used for processing lead, copper and zinc ores. Copper smelting began in 1910 under the ownership of IS&R, with 4,000 tons of copper ore per day being processed. In 1912, IS&R built a lead smelter. Over the years, a lead-zinc sulfide flotation mill and a slag treatment plant for lead and zinc recovery were added. Copper production ceased in 1946, when the copper smelter closed. Lead smelting was discontinued in 1972. The Tooele Smelter was demolished in 1972.

d. In December 1908, a railroad route was surveyed to connect the San Pedro, Los Angeles, and Salt Lake Railroad main line to the site of the Tooele Smelter. Construction began in 1909. The Tooele Valley Railroad, as the new line was named, ran from Warner, Utah, three miles west of Tooele, to the Tooele Smelter, four miles east of town. The Railroad connection allowed ore to be shipped to the smelter from mines anywhere in the West. It also allowed the shipment from the smelter to other processing facilities of thousands of tons of lead bullion, blister copper, and numerous by-products, including silver.

e. The Tooele Valley Railroad was a wholly-owned subsidiary of IS&R, incorporated in 1909. It was operated and served the smelter for more than 60 years. The corporate ownership history for the Railroad is the same as that described for the Tooele Smelter in Paragraphs b. and c. above, including that ISC and subsequently IS&R (the company formed in 1934) owned and operated the Tooele Valley Railroad until 1973 when IS&R was merged into Anaconda, followed by AR

acquiring Anaconda in 1977 and merging Anaconda into AR in 1981. After the closing of the smelter in 1972, business for the Railroad was sparse, and it was finally dismantled in 1983. AR is the current owner of portions of the Site to the east of Draba Road.

### **Release or Threatened Release**

8. Operation of the Tooele Valley Railroad, including transport of materials, resulted in the deposition of Waste Material containing heavy metals, including lead and arsenic, along the length of the railroad right-of-way, in levels that may threaten human health and the environment.

9. Although this Removal Action is based primarily on sampling performed in 2003-2004, parts of the Site have been sampled previously. In January 2000, the State of Utah Department of Environmental Quality performed sampling at the property within the Site owned, or formerly owned, by the Tooele County Housing Authority (TCHA) and other areas within the town of Tooele (hereafter referred to as the "Residential Properties"). The State, Utah Department of Environmental Quality, requested that EPA continue the investigation and perform additional sampling. In April 2000, during the construction of 13 residences at the Residential Properties, EPA took 24 XRF screening samples and 5 soil samples from approximately one block west of the Railroad Museum to approximately 500 feet east of 7<sup>th</sup> Street, in Tooele. The highest level of lead detected by XRF screening was approximately 3762 ppm, and the highest level of lead detected by soil sampling was approximately 5460 ppm. In August 2000, in order to verify or confirm the prior sampling, EPA re-sampled five of the soil samples from the April 2000 investigation. One of these samples showed significantly lowered lead level -- 49 ppm instead of the initial value of 1080 ppm -- however the results from the other four samples were 1100 ppm, 120 ppm, 1800 ppm and 54 ppm.

EPA concluded that it was necessary to re-sample the Residential Properties and adjacent areas in 2003-2004 for the following reasons: a) EPA reviewed the 2000 sampling data and determined that, in light of the more recent, comprehensive sampling data immediately to the east of the TCHA properties, described above, the 2000 sampling conducted at the Residential Properties was not sufficient to accurately or completely determine the nature and extent of contamination in that area; b) according to the TCHA, fill was brought in during construction of the residences; however, the amount and source of such fill, where and how thickly it was applied, or its ability to provide an effective barrier preventing contact with residents could not be confirmed; and c) with the additional sampling, EPA would be able to provide a clear response to inquiries received from local residents as to the "cleanliness" of the soil.

10. In 2003, AR, under EPA oversight, performed sampling at other portions of the Site, including areas immediately to the east of the Residential Properties. In November 2003, EPA issued an Unilateral Administrative Order for Sampling Activities to AR, EPA Docket No. CERCLA-08-2004-0002 ("Sampling UAO") to perform sampling activities at the Site to characterize the levels and extent of contamination. AR, under EPA oversight in connection with the Sampling UAO, performed soil sampling activities in Tooele, at the Residential Properties and in the other areas of the Site to the east of Tooele. AR submitted the results of these sampling activities in a report entitled "Tooele Valley Railroad Grade Site Data Summary Report," dated May 2004 ("Sampling Report"), prepared by Anderson Engineering Company, Inc., as project contractor to AR (copy of Sampling Report summary pages attached hereto as Appendix 3.)

11. As detailed in the Sampling Report, analytical results show levels of lead in Site soils ranging



from “non-detect” to over 33,000 mg/kg (parts per million, or ppm). Levels as high as 1440 ppm were found in areas within the area near the Residential Properties. Results indicate that one residential lot and the gravel road east of Tooele running past the Oquirrh Hills School have soils above the 580 ppm lead health-based protective action (clean-up) level established by EPA for residential areas of the Site. Portions of the agricultural and recreational areas of the Site east of the city of Tooele and east of Draba Road showed lead levels over 33,000 ppm. This section of the Site contains soils above the 2200 ppm lead health-based action (clean-up) level established by EPA for agricultural/recreational areas of the Site.

12. Arsenic was detected in levels of over 5000 ppm at the Site, which is above both the health-based protective residential and recreational/industrial clean-up levels (110 ppm and 900 ppm, respectively) determined by EPA for arsenic at this Site. Other metals including copper, chromium, mercury and zinc were also found in elevated concentrations.

### **Endangerment**

13. The above-listed hazardous substances and pollutants and contaminants are contained in the soils at the Site in concentrations and quantities that may pose an imminent and substantial endangerment to the public health and the environment. Outlined below are the specific endangerment criteria for the major contaminants of concern found at the Site:

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**Arsenic** – Excess exposure to arsenic is known to cause a variety of adverse health effects in humans. These effects depend on exposure level and duration. Arsenic is a known human carcinogen. Inhalation exposure is associated with increased risk of lung, gastrointestinal, renal or bladder cancer. Oral exposure to arsenic is associated with skin, liver, and bladder cancer. At very high doses, oral exposure to arsenic elicits nausea and vomiting. Lower doses over a chronic time period may elicit skin abnormalities, such as hyperkeratosis; kidney, and liver toxicity.

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**Lead** – At high doses lead exposure is associated with adverse effects on reproduction and development, as well inhibition of heme synthesis. At lower doses, impairment of the nervous system in young children is considered to be of greatest concern. Younger children are more susceptible to lead exposure because they absorb lead from their gastrointestinal tracts at a greater rate than adults do, their neurological systems are still rapidly developing, and they have more direct contact with soil and indoor dust than adults do. These neurological effects manifest as decreased I.Q., shortened attention span, and decreased hand and eye coordination. EPA classifies lead as a B2 carcinogen. Studies in animals show an increased incidence of kidney tumors in association with very high levels of lead exposure.

14. Several migration pathways and exposure routes exist within the residential and non-residential areas of the Site through which humans may be exposed to toxic concentrations of lead and arsenic. The principle pathways within the residential areas at the Site include ingestion of contaminated surface soils, ingestion and inhalation of airborne soil particles and contaminated dust, and ingestion of vegetables grown in contaminated soils. Humans may also be exposed to contamination through ingestion of agricultural (food) products or livestock raised at the Site, including chickens and their eggs. Approximately 18 people live in the residential areas of the Site.

15. Young children and adults may experience adverse health effects when exposed to elevated concentrations of lead and arsenic and other metals in the soil. The primary route of

exposure is via incidental ingestion of the contaminated soil. Direct ingestion of contaminated soil can result from actual consumption of soil or through the mouthing of contaminated objects. Children are the most susceptible to exposure through this pathway. Household dust containing various levels of contaminants can be ingested and inhaled through direct contact with indoor dust which is contaminated from outdoor soil and/or ingestion of food contaminated with indoor dust. Other routes of exposure include inhalation of wind-blown soil particles and dermal contact with the soil. Ingestion of vegetables grown in contaminated soils is another potential exposure route. Vegetables can actively take up contaminants from the soil and incorporate them. Vegetables can become contaminated through contaminants adhering to roots and deposition of wind-blown and/or rain-splashed particles onto plant surfaces.

16. In addition to those portions of the Site that are presently in residential usage, the gravel road east of Tooele runs adjacent to a school and golf course and is situated near a youth garden and ballfield. Other more rural portions of the Site to the east of Draba Road include dirt road or other surfaces amenable to recreational activities and generally are also characterized by an absence of physical barriers preventing access by the public.

17. In June 2003, EPA completed a risk assessment entitled "Baseline Human Health Risk Assessment for the International Smelting and Refining Site Tooele County, Utah (Final)" USEPA, Region 8, June 2003 ("EPA Risk Assessment"). Health-based protective action levels and related criteria for residential and recreational areas to be addressed under this Removal Action were developed and established by EPA, in communication with the State, based on the EPA Risk Assessment and the Sampling Report data. The EPA Risk Assessment addressed risks at a similar residential area at the IS&R Site, the Pine Canyon Township. Based on the similarities between the Tooele Valley Railroad Grade Site and the Pine Canyon Township residential areas, including proximity to, or inclusion of, residential yards and other recreational areas, the types of hazardous substances released (chiefly lead and arsenic), and risks to human health and the environment posed by such releases, EPA determined that it is appropriate to utilize the same health-based action levels for these two areas of the IS&R Site. EPA toxicologist Susan Griffin, Ph.D., DABT, has reviewed this information and supports EPA's determination of action levels for this Removal Action. The levels of lead and arsenic reported in the Sampling Report are above the health-protective residential soil lead clean-up levels (action levels) determined by EPA for the Site (580 ppm for residential areas and 2200 ppm for recreational areas) and soil arsenic clean-up levels for the Site (100 ppm for residential areas and 900 for recreational areas). These action levels are consistent with action levels determined by EPA at other Utah Superfund sites.

### **Respondent**

18. Respondent is Atlantic Richfield Company ("AR"). AR is a Delaware corporation registered in the State of Utah as a qualified, active corporation in good standing, organized in the State of Utah on April 30, 1985.

19. Respondent was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances or pollutants or contaminants at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent also accepted hazardous substances and/or pollutants and contaminants for transport to the facility, within the meaning of section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4). Respondent is an "owner" of portions of the facility within the meaning of

section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

### **Response Actions**

20. There have been prior CERCLA response actions at the Site, chiefly the sampling efforts described above.

21. On October 1, 2004, EPA issued an Action Memorandum for the Tooele Valley Railroad Grade Site soil removal. The Action Memorandum established that one parcel from the residential area within Tooele, Utah, will be required to have soil removed to address the contamination present in the yard soils. In addition, the Action Memorandum determined that soil removal is required for the gravel road east of Tooele and for the former railroad bed east of Droubay Road at the Site.

22. EPA has incurred response costs in both its sampling and oversight activities at and in connection with the Site.

### **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

23. Based on the Findings of Fact set forth above and the Administrative Record supporting this Removal Action, EPA has determined that:

a. The Tooele Valley Railroad Grade Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The Waste Material found at the Site, as identified in the Findings of Fact above, include “hazardous substance(s)” as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and “pollutants and contaminants” as defined by section 101(33) of CERCLA, 42 U.S.C. § 9601(33). These include lead and arsenic.

c. Respondent is a “person” as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for performance of response actions and for response costs incurred and to be incurred at the Site. Respondent is a current “owner” of portions of the facility and was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of sections 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2). Respondent also accepted hazardous substances for transport to the facility, within the meaning of section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The conditions present at the Site constitute an imminent and substantial endangerment to public health or welfare or the environment within the meaning of section 106(a) of CERCLA,

42 U.S.C. § 9606(a). These conditions include, but are not limited to: actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants (this factor is present at the Site due to the existence of metals, including lead and arsenic, in the soils at the Site and the proximity of residential areas, and other areas to which people and animals have access) and the high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate, due to wind and tracking or other transport of soils by human activity.

g. The Removal Action required by this Order is necessary to protect the public health or welfare or the environment, are in the public interest, and are not inconsistent with the NCP and CERCLA.

## **VI. ORDER**

24. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including, but not limited to, all attachments (appendices) to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

### **Notice of Intent to Comply**

25. Respondent shall notify EPA in writing within ten (10) days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by Respondent.

### **Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

26. a. Respondent shall perform the Removal Actions or retain a contractor(s) to perform the Removal Actions. Respondent shall notify EPA of Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within ten (10) business days of the effective date of this Order. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Removal Actions under this Order at least fifteen (15) days prior to commencement of such Removal Actions. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondent, or of Respondent's choice of itself to do the Removal Actions. If EPA disapproves of a selected contractor or Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the Removal Actions itself within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within five (5) business days of EPA's disapproval.

b. Within ten (10) days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present onsite or readily available during Site Work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that

person's name and qualifications within five (5) business days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

27. EPA has designated Shun-Ping Chau of the Emergency Response Unit, Region 8, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to:

Shun-Ping Chau, OSC, 8 EPR-ER,  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202. 80202-2466  
Phone: (303) 312-6848  
Fax: (303) 312-6071

### **Work to Be Performed**

28. Respondent shall perform, at a minimum, all removal activities described in this Order, and in the Work Plan, as required to be submitted and as may be approved by EPA under this Order. Respondent shall perform activities at the Site to address lead and arsenic contamination. The required Work shall be subject to EPA approval and shall include categorization and inventory of soils for the residential yards and other properties in Tooele and the non-residential areas of the Site; excavation of soils above EPA-determined health-based action levels, with confirmatory soil sampling at depth, and proper disposal of the contaminated soil at either an approved off-site permitted treatment or disposal facility(s) or at an appropriate location at the IS&R Superfund Site such as the tailings impoundment area, subject to EPA approval and in accordance with the final remedy (Record of Decision) for the IS&R Superfund Site; and restoration of the excavated areas with clean soil and native seed to prevent erosion. For the identified residential properties at the Site, the top 12 inches of existing soil will be excavated and confirmatory sampling performed at the 12 inch depth, and excavation to 18 inches if such confirmatory sampling exceeds EPA action levels. Residential garden areas, if any, shall be excavated to a depth of 18 inches. Permeable geo-textile filter fabric will be placed on the sub-grade and covered with clean fill. Surface features will be replaced or returned as nearly as possible to "as was" condition. To the extent practicable, the Work shall attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws, as identified in the Work Plan approved under this Order. Respondent shall perform and complete all activities in the Work Plan in accordance with the schedule provided therein, as may be approved by EPA pursuant to this Order.

### **Work Plan and Implementation**

29. a. Within thirty (30) days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the Removal Actions set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order, including identification of all ARARs, subject to EPA approval.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within ten (10) days of

receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order.

### **Health and Safety Plan (HASP)**

c. Within thirty (30) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 C.F.R. Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the Removal Actions.

### **Quality Assurance and Sampling (QAPjP/QASP)**

d. Within thirty (30) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a draft Quality Assurance Project Plan (QAPP) or Quality Assurance Sampling Plan (QASP). In developing the QAPP/QASP, the Respondent shall consider and utilize the following EPA guidance documents: "Guidelines and Specifications for Preparing Quality Assurance Project Plan (QAMS-004/80)" and "Emergency Response Branch Region VIII Quality Assurance Project Plan (ERB Region VIII QAPP)." The sixteen elements listed in QAMS-005/80 shall be addressed. Respondent shall incorporate all changes to the QAPP/QASP recommended by EPA.

e. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; and the Representative Sampling Guidance for soil, air, ecology, waste, and water as this information becomes finalized and available.

f. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

g. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing actions under this Order. EPA shall have the right to take any additional samples that it deems necessary.

## **Final Report**

30. a. Within sixty (60) days after completion of all Work required by this Order under the Work Plan, Respondent shall submit for EPA review and approval a final report (Final Report) summarizing the actions taken to comply with this Order. The Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports."

b. The Final Report shall fully describe all work performed, including a detailed discussion of the quantities, types and locations of Waste Material and contaminated soils removed from the Site, their disposal, and area restoration and re-vegetation. Respondent shall also describe all actions taken to meet the applicable or relevant and appropriate requirements ("ARARs") identified by EPA for this Work. The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## **Reporting**

31. a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every month, by no later than the 10<sup>th</sup> day of each month for the previous month's activities. Respondent shall submit such reports beginning on the 10<sup>th</sup> day of the second calendar month after commencing Work under this Order until the cessation of the Removal Actions required under this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section VI, Paragraphs 24 and 25 of this Order (Access to Property and Information).

## **Access to Property and Information**

32. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Utah representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

33. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if, after using its best efforts, Respondent is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the Removal Actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

#### **Record Retention, Documentation, Availability of Information**

34. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on, or released from, the Site, for ten years following completion of the Removal Actions required by this Order. At the end of this ten-year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection and, upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten-year period at the written request of EPA.

35. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

36. Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

#### **Off-Site Shipments**

37. All hazardous substances or pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive. Unless impracticable, prior notification of out-of-state waste shipments should be given to the OSC consistent with OSWER Directive 9330.2-07.

#### **Compliance With Other Laws**



38. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in section 121(e) of CERCLA and 40 C.F.R. § 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (see “The Superfund Removal Procedures for Consideration of ARARs During Removal Actions,” OSWER Directive No. 9360.3-02, August 1991).

### **Emergency Response and Notification of Releases**

39. If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his or her unavailability, shall notify the National Response Center at (800) 424-8802 of the incident or Site conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

40. Respondent shall notify EPA at least 48 hours prior to performing any on-site Work pursuant to the Work Plan approved under this Order. Respondent shall not commence or undertake any Removal Actions at the Site without prior EPA approval and except in conformance with the terms of this Order.

41. In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's OSC at (303) 312-6848 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.

### **VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

42. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 C.F.R. § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

43. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. EPA shall notify Respondent, and Respondent shall notify EPA five (5) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

## **VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

44. Violation of any provision of this Order may subject Respondent to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

## **IX. RESERVATION OF RIGHTS**

45. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances or pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any Response Costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

## **X. OTHER CLAIMS**

46. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

47. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

48. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

## **XI. MODIFICATIONS**

49. Modifications to any plan or schedule or the Work Plan, as may be approved under this Order, may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral

modification, it will be memorialized in writing within seven (7) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the undersigned EPA program director.

50. If Respondent seeks permission to deviate from any approved plan or schedule under this Order, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

51. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified. No failure or delay by EPA to acknowledge, or make a decision with regard to, any request by Respondent to deviate from any approved plan or schedule or from the requirements and procedures set forth in this Order shall relieve Respondent of its obligations to comply with all requirements of this Order unless it is formally modified in accordance with the procedures set forth herein.

## **XII. NOTICE OF COMPLETION**

52. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to Respondent. If EPA determines that any Removal Actions have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

## **XIII. ACCESS TO ADMINISTRATIVE RECORD**

53. The Administrative Record supporting these Removal Actions is available for review during normal business hours at the EPA Region 8 Superfund Records Center on the 5<sup>th</sup> floor, at 999 18<sup>th</sup> Street, in Denver, CO.

## **XIV. OPPORTUNITY TO CONFER**

54. Within five (5) days after the effective date of this Order, Respondent may request a conference with EPA. Any such conference shall be held within seven (7) days after the effective date unless extended by agreement of EPA and Respondent. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

55. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within three (3) days following the conference, or within ten (10) days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not

give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this Paragraph, shall be directed to James Stearns, Enforcement Attorney, U.S. EPA (8ENF-L), 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466, telephone (303) 312-6912.

## **XV. INSURANCE**

56. At least seven (7) days prior to commencing any on-site Work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## **XVI. ADDITIONAL REMOVAL ACTIONS**

57. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health or welfare or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health or welfare or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by EPA as additional removal actions. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent(s) shall submit a revised draft Work Plan within (20) days of receipt of EPA's notification of the required revisions. Respondent(s) shall implement the Work Plan as finally approved in writing by EPA in accordance with the provisions and schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent(s) shall not commence or undertake any removal actions at the Site without prior EPA approval. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XI.

## **XVII. SEVERABILITY**

58. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

**XVIII. EFFECTIVE DATE**

59. This Order shall be effective five (5) days after the Order is signed by EPA.

**IT IS SO ORDERED:**

By: **SIGNED** \_\_\_\_\_ Date: **10.04.04** \_\_\_\_\_

Douglas Skie, Director  
Preparedness, Assessment, and Emergency Response Program  
Office of Ecosystems Protection and Remediation  
U.S. Environmental Protection Agency, Region 8

EFFECTIVE DATE: **October 9, 2004** \_\_\_\_\_

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE  
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON OCTOBER 4, 2004.**